Filed July 8, 1991

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 90-3696

ROBERT TAYLOR,
Appellee

v.

FREELAND & KRONZ;
WENDELL G. FREELAND;
RICHARD F. KRONZ,
Appellants

On Appeal From the
United States District Court
For the Western District of Pennsylvania
(D.C. Civil Action No. 89-2156)

Argued February 28, 1991
BEFORE: STAPLETON and ALITO,
Circuit Judges, and
CAHN, *District Judge**
Opinion Filed July 8, 1991

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* Honorable Edward N. Cahn, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

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OPINION OF THE COURT

STAPLETON, *Circuit Judge*:

This Chapter 7 bankruptcy case calls for us to interpret section 522 of the Bankruptcy Code. 11 U.S.C. § 522 (1988). Section 552(*l*) requires that a trustee or other party in interest file with the bankruptcy court any objections to property exemptions claimed by the debtor. In the absence of a filed objection, the property claimed by the debtor as exempt is exempt. The trustee in this case never filed an objection to the exemptions claimed by the debtor. Nevertheless, the bankruptcy court ordered the debtor and her attorneys to pay the trustee the value of part of the property the debtor had claimed as exempt. The district court affirmed. Because we

conclude that such a result is unwarranted under the clear language of the Bankruptcy Code and Bankruptcy Rules, we will reverse the order of the district court.

I.

On October 24, 1984, Emily Davis filed a voluntary petition for bankruptcy under Chapter 7 of the Bankruptcy Code. Her total liabilities were $11,069.59. With her petition for bankruptcy, Davis filed the required "schedules" of her property. On Schedule B-2, on which the debtor lists personal property, Davis cited the potential proceeds of a discrimination lawsuit she had brought against TWA which was then pending on appeal. She indicated the value as "unknown." On Schedule B-4, on which a debtor claims property as exempt, Davis again identified the potential proceeds of the TWA lawsuit and listed the value as "unknown."

On November 26, 1984, Robert Taylor was appointed trustee in the bankruptcy proceeding. On January 4, 1985, Taylor conducted the statutorily required section 341(a) meeting of the creditors of Davis' estate. *See* 11 U.S.C. § 341(a) (1988). Davis and her counsel attended and indicated a possible recovery of $90,000 in the case against TWA.

On January 7, 1985, Taylor mailed a letter to Wendell Freeland and Richard Kronz of Freeland & Kronz, Davis' counsel in the pending TWA suit, advising them that the net proceeds of the lawsuit were an asset of the bankruptcy estate. However, neither Taylor nor any party in interest ever filed with the court a formal objection to Davis' claimed exemptions.

On September 11, 1987, Davis executed a settlement agreement with TWA under which TWA was to pay Davis $110,000. Of this amount, $23,483.75 was allocated to Davis for "back pay or front pay," $23,483.75 to Davis for release of all alleged tort and other claims against TWA, and $63,032.50 to Freeland & Kronz for attorney's fees and costs. On September 17, 1987, TWA issued a check for $71,516.25 payable to Davis and Freeland & Kronz. This check covered the release of tort claims and the attorney's fees. On September 21, 1987, TWA issued another check, payable to Davis, for $16,614.75, which was the amount of her back and front pay after deduction of $6,689.00 for payment of taxes. TWA also distributed $15,000 worth of travel vouchers to Freeland & Kronz pursuant to the settlement agreement.

On May 2, 1988, Taylor sent a letter to Freeland & Kronz requesting information on the status of Davis' cause of action against TWA. On May 6, 1988, Kronz informed Taylor of the settlement. On October 4, 1988, Taylor filed a complaint against Davis, Freeland & Kronz, Wendell Freeland, and Richard Kronz in the bankruptcy court to avoid post-petition transfers and to recover either the property transferred or the value of such property. On September 7, 1989, the United States Bankruptcy Court for the Western District of Pennsylvania ordered the defendants to return $23,483.75 plus interest to Taylor. 105 Bankr. 288 (Bankr. W.D. Pa. 1989). This represented the amount awarded in the TWA settlement for release of tort claims. Freeland & Kronz and the individuals Wendell Freeland and Richard Kronz (hereinafter Freeland & Kronz) appealed to the district court. On September 7, 1990, the United States District Court for the Western District of Pennsylvania affirmed the bankruptcy court's order. 118

Bankr. 272 (W.D. Pa. 1990). Freeland & Kronz filed a notice of appeal in this court from the district court's order.

The bankruptcy court had jurisdiction pursuant to 28 U.S.C. § 157. The district court had jurisdiction over the appeal pursuant to 28 U.S.C. § 158(a). We have jurisdiction pursuant to 28 U.S.C. § 158(d) over the appeal from the order of the district court.

II.

The issue raised by this appeal is whether the bankruptcy court and the district court correctly interpreted section 522(*l*). Freeland & Kronz claims that the proceeds of Davis' TWA suit are exempt because Davis claimed them as exempt and no party in interest filed a timely objection to the claimed exemptions. Taylor argues that claimed exemptions that are invalid under section 522(b) cannot be considered valid solely because no party in interest filed an objection with the court. We exercise plenary review of this question of law. *Dawson v. United States*, 894 F.2d 70, 72 (3d Cir. 1990).

The statutory background is not complicated. Once the bankruptcy estate is created, the debtor may exempt certain property from it pursuant to section 522. If the trustee or another party in interest objects to a claimed exemption, the bankruptcy court must determine pursuant to section 522(b) -- the subsection that specifies the allowable exemptions -- what property is exempt and what property remains property of the estate. When a claimed exemption is upheld by the court, the property so exempted is no longer considered property of the bankruptcy estate.

As noted, a threshold requirement must be met before the court may consider the validity of the claimed exemptions. Section 522(*l*) states: "The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section . . . . Unless a party in interest objects, the property claimed as exempt on such list is exempt." The Bankruptcy Rules, which took effect on August 1, 1983, flesh out the statutory requirements. Bankruptcy Rule 4003(b) provides: "The trustee or any creditor may file objections to the list of property claimed as exempt within 30 days after the conclusion of the meeting of creditors held pursuant to Rule 2003(a) or the filing of any amendment of the list unless, within such period, further time is granted by the court." Bankruptcy Rule 9006(b)(3) allows enlargement of the time period for taking action under certain bankruptcy rules, but specifically states that the court "may enlarge the time for taking action under Rule[] . . . 4003(b) . . . only to the extent and under the conditions stated in those rules."

The statute and rule establish a strict procedure for objections to claimed exemptions. Their import is clear and they admit of no exception. Unless the trustee or another party in interest objects to the debtor's claimed exemptions within the thirty-day period following the creditors' meeting or the amendment, the property claimed as exempt by the debtor is exempt. No provision of the Code provides that the failure to object is excused when the debtor's exemption claim is not advanced "in good faith," nor is there an exception provided for situations where a claimed exemption has only a questionable basis in section 522(b).

Despite the seemingly clear statutory scheme, the courts have not been unanimous in interpreting section

522(*l*). Courts have taken three different approaches to this issue. Under the first, the "literal" approach, a court will not examine the merits of a claimed exemption if an objection is not filed within the time allowed. *See, e.g., In Re Bradlow*, 119 Bankr. 330 (Bankr. S.D. Fla. 1990); *In re Duncan*, 107 Bankr. 754 (Bankr. W.D. Okla. 1989); *Doyle v. Grossman (In re Grossman)*, 80 Bankr. 311 (Bankr. E.D. Pa. 1987) (citing earlier decisions by bankruptcy courts reaching the same result); *In re Payton*, 73 Bankr. 31 (Bankr. W.D. Tex. 1987).

Under the second approach, an objection is not necessary if the debtor's claimed exemption is invalid under section 522(b). *See, e.g., Stutterheim v. First State Bank, Alemena, KS (In re Stutterheim)*, 109 Bankr. 1010, 1013 (D. Kan. 1989); *In re Staniforth*, 116 Bankr. 127 (Bankr. W.D. Wis. 1990); *In re Velis*, 109 bankr. 64 (Bankr. D.N.J. 1989), *aff'd*, 123 Bankr. 497 (D.N.J. 1991); *In re Bennett*, 36 Bankr. 893 (Bankr. W.D. Ky. 1984). The *Bennett* court set forth the equitable considerations that other courts adopting this approach have found persuasive. The court first noted that, read literally, the statute is clear that unless a party objects the debtor's claimed exemptions are exempt. But the court refused to follow this language: "we are unable to give the expected legal effect to statutory language which, standing alone, seems perfectly clear." *Bennett*, 36 Bankr. at 894. If it accepted such a reading, the court declared, the result would be "exemption by declaration," and we "would revert to the law of the streets, with bare possession constituting not nine, but ten, parts of the law; orderly administration of estates would be replaced by uncertainty and constant litigation if not outright anarchy." *Id.* at 895.

The third approach occupies a middle ground between the literal reading of the statute and *Bennett*. Under this approach, a court is to examine a claimed exemption, even when no timely objection has been formally filed, to determine if there exists a "good-faith statutory basis" for the claimed exemption. If there is a good-faith basis, the exemption is allowed; if there is not a good-faith basis, the exemption is not allowed. Two federal courts of appeals have adopted this approach. *See In re Peterson*, 920 F.2d 1389 (8th Cir. 1990); *Munoz v. Dembs (Matter of Dembs)*, 757 F.2d 777 (6th Cir. 1985); *see also In re Idvik*, 118 Bankr. 993 (Bankr. N.D. Iowa 1990).

In *Dembs*, the Sixth Circuit stated that the "clear import of [Rule 4003(b)] and of section 522(*l*) is that objections to claimed exemptions must be made within thirty days after the creditors' meeting or any amendment, or they are waived." *Dembs*, 757 F.2d at 780. But the court did not end its discussion there: "We do not mean by this to endorse 'exemption by declaration'; there must be a good-faith statutory basis for exemption, and in that respect we fully approve *In re Bennett*." *Id*. In *Peterson*, the Eighth Circuit agreed with the Sixth Circuit's analysis. Although noting that "Rule 4003(b) establishes a bright-line, thirty-day limit for objections to claimed exemptions," the court adopted the bad-faith exception to avoid the "undesirable effects of 'exemption by declaration.'" *Peterson*, 920 F.2d at 1393. Thus, the court held that despite the absence of a timely objection, a court must examine the merits of a claimed exemption to determine if it was made in good faith.

In the instant case, both the bankruptcy court and the district court followed *Bennett*. The bankruptcy court, though noting that "plausible arguments" could be made in support of a literal reading of the statute, concluded that *Bennett* represents the "superior view." 105 Bankr. at 929. The court relied on section 522(b), which states that a debtor may exempt property that is exempt under federal, state, or local law. The court stated that this language would be superfluous if section 522(*l*) were given its literal effect. *Id.* at 292-93. The bankruptcy court also cited policy reasons in support of its position. A literal reading would provide an incentive for debtors of questionable property to claim all of their property as exempt. *Id.* at 293. The district court agreed with the bankruptcy court's analysis and result, stating that a contrary holding would lead to "exemption by declaration." 118 Bankr. at 275.

III.

We respectfully disagree with the conclusion reached by the courts below and by the Courts of Appeals for the Sixth and Eighth Circuits. We will adhere to the clear and orderly scheme Congress enacted for property exemption determinations and hold that in the absence of an objection filed within thirty days after the section 341(a) creditors' meeting or the filing of an amendment to the exemption list, property claimed as exempt by the debtor is exempt.

A.

Our task is "to interpret the rules neither liberally nor stingily, but only, as best we can, according to their apparent intent. Where that intent is to provide leeway,

a permissive construction is the right one; where it is to be strict, a permissive construction is wrong." *Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 319 (1988) (Scalia, J., concurring). As we have explained earlier, the text of section 522(*l*) and Rule 4003(b) could not be much clearer in stating without exception that property claimed as exempt by the debtor is exempt unless a timely objection is filed with the court by a party in interest. That all but resolves this case, for the general rule of statutory interpretation is that where "the terms of a statute [are] unambiguous, judicial inquiry is complete except in rare and exceptional circumstances." *Demarest v. Manspeaker*, 111 S. Ct. 599, 604 (1991). Such circumstances are present only in the "rare" case where "the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters," *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 242 (1989) (quoting *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982)); in other words, a result "so bizarre that Congress 'could not have intended' it." *Demarest*, 111 S. Ct. at 604 (quoting *Griffin*, 458 U.S. at 575).

This case is not one of the "rare" cases. The literal interpretation of section 522(*l*) and Rule 4003(b) produces a result -- not allowing a party in interest to object to a debtor's claimed exemptions after the time period for doing so has elapsed -- that is not "demonstrably at odds with the intentions of the drafters." The text of the statute and rule, the legislative history, and a comparison of the present statute and rule with the statute and rule previously in effect all indicate that Congress intended a strict rule: a party in interest must

file a timely objection, or the property claimed as exempt by the debtor is exempt.

The text is of course the best indication of Congress' intent, *West Virginia Univ. Hosp., Inc. v. Casey*, 111 S. Ct. 1138, 1147 (1991), and the text here admits of no exceptions to the bright-line procedural rule. Furthermore, the evolution of the bankruptcy laws suggests that Congress intended to shift the burden of objection from the debtor to the other parties in interest. The pre-1978 version of the bankruptcy laws and former Bankruptcy Rule 403 required the trustee to file a report which separated allowable exemption claims from those not allowable. The burden was then on the debtor and the creditors to object within 15 days. If the debtor and creditor failed to object within 15 days, the exemptions as reported by the trustee were allowed. The Advisory Committee Note to present Rule 4003 states, "[t]he Code changes the thrust of [the former rule] by making it the burden of the debtor to list his exemptions and the burden of parties in interest to raise objections in the absence of which 'the property claimed as exempt on such list is exempt.'" Fed. R. Bankr. 4003 advisory committee's note (quoting 11 U.S.C. § 522(*l*)).

An examination of the legislative materials accompanying section 522 yields Taylor no better result. The House Report states: "Subsection (*l*) requires the debtor to file a list of property that he claims as exempt from the property of the estate. Absent on objection to the list, the property is exempted." H.R. Rep. No. 595, 95th Cong., 2d Sess. 363, *reprinted in* 1978 U.S. Code Cong. & Admin. News 5963, 6319. Nothing in the legislative materials suggests that any exceptions to this bright-line rule were intended.

Congress intended a strict rule, and the result achieved by following the strict textual requirement is not a result "demonstrably at odds" with that intent. In fact, only by allowing an exception to the strict rule would we cause a result demonstrably at odds with the legislative intent.

B.

The courts that have departed from the statutory language have identified a number of policy factors that, in the opinion of those courts, support a non-literal reading of the statute and rule. Before we address them, we first note that even if we were authorized to disagree with Congress on the basis of our policy views, it is not clear that we would do so here. A strong policy rationale supports the literal approach. The time limits and obligations established by section 522(*l*) and Rule 4003(b) serve the dual purposes of finality and certainty. In the bankruptcy context, the need for finality and certainty is especially acute. *See Hoos & Co. v. Dynamics Corp. of America*, 570 F.2d 433, 439 (2d Cir. 1978); *Grossman*, 80 Bankr. at 314-15; *see also* Scalia, *The Rule of Law as a Law of Rules*, 56 U. Chi. L. Rev. 1175, 1178-79 (1989) ("Even in simpler times uncertainty has been regarded as incompatible with the Rule of Law."). This need is reflected by Bankruptcy Rule 9006, which states that "[i]n the interest of prompt administration of bankruptcy cases certain time periods may not be extended." Fed. R. Bankr. 9006 advisory committee's note. Thus, where there is a date when the parties' rights can be finally determined -- in this case, thirty days after the creditors' meeting if no objection is filed -- the parties can proceed from the date knowing which property is property of the estate and which property belongs to the debtor. The

debtor from that day forward can treat exempted property as his or her own and is not forced to wait until some unknown future date when the trustee or another party in interest might haul the debtor into court seeking that property.

We turn now to some of the policy considerations that other courts have cited in support of an exception to a literal interpretation of the statute. It is true, as the Eighth Circuit noted, that strict compliance with the section 522(*l*) and Rule 4003(b) might in certain cases provide the debtor with an "undeserved windfall." *Peterson*, 920 F.2d at 1393. That is true of enforcement of all procedural rules, yet the Supreme Court has not been willing to disregard a clear procedural rule simply out of an ex post concern for fairness in the individual case. For example, in *Torres*, 487 U.S. at 312, a case presenting more compelling circumstances than the instant case for relaxing a bright-line procedural rule, the Supreme Court decided that the failure to list one of the appellants on the notice of appeal in accordance with Civil Rule 3(c) deprived the appellate court of jurisdiction over that appellant's case. Justice Marshall stated for the Court, "We recognize that construing Rule 3(c) as a jurisdictional prerequisite leads to a harsh result in this case, but we are convinced that the harshness of our construction is 'imposed by the legislature and not by the judicial process.'" *Id.* at 318. Compliance with section 522(*l*) and Rule 4003(b) may lead in certain cases to an undeserved windfall for the debtor. But we, like the Supreme Court, will not disturb the clear language of the statute and rule to prevent a windfall.

The courts departing from the statutory language have also expressed concern that a literal reading would

lead to a system of "exemption by declaration" whereby the debtor would have incentive to claim all property as exempt in the hope that no party in interest would object. *See, e.g., Bennett*, 36 Bankr. at 895. Inserting an exception into section 522 in order to achieve this policy goal ignores two safeguards that already ensure that debtors have little or no incentive to claim all of their property as exempt. First, and most importantly, Bankruptcy Rule 9011, which is analogous to Rule 11 of the Civil Rules, forbids bad faith exemption claims and authorizes sanctions for violation of this prohibition. Rule 9011 should act as the primary deterrent against debtors engaging in bad faith exemption claims. Second, no external impediment prevents a trustee or other party in interest from filing objections to the claimed exemptions. The only hindrance is such a party's neglect. Thus, in the vast majority of cases, overzealous claims of exemptions by a debtor will serve only to induce the enmity of the other parties and of the court.

The bankruptcy court in the instant case stated that a literal reading of section 522(*l*) would render section 522(b) superfluous. 105 Bankr. at 292-92. We disagree. Once an exemption has been claimed, a two-step approach applies. The threshold requirement, which is imposed by section 522(*l*), is a timely objection by a party in interest. If such an objection is filed, then the bankruptcy court is to decide if the claimed exemption fits into one of the categories listed in section 522(b). Section 522(b) is not rendered superfluous by a literal reading of section 522(*l*); it will be involved in almost all cases -- those where a party in interest properly objects. Indeed, the bankruptcy court's reading of the statute would render section 522(*l*) meaningless.

IV.

Absent a timely filed objection, the property claimed by a debtor as exempt under section 522 of the Bankruptcy Code is exempt. In this case, Davis the debtor claimed the potential proceeds of her then-pending lawsuit against TWA as exempt. No objection to that claimed exemption was filed with the court by any party in interest. The proceeds of the TWA suit are thus exempt. Because we find for Freeland & Kronz on this issue, we need not decide other issues it has raised. We will reverse the order of the district court.

A true Copy:
Teste:

Clerk of the United State Court of
Appeals for the Third Circuit

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
PENNSYLVANIA

In Re:
EMILY DAVIS,
a/k/a EMILY WINN,

Civil Action No. 89-2156
Bankruptcy No. 84-2291
Adversary No. 88-446

Debtor,

ROBERT J. TAYLOR,
Trustee,

Plaintiff,

vs.

FREELAND & KRONZ, a partnership,
WENDELL G. FREELAND, RICHARD F.
KRONZ and EMILY DAVIS,

Defendants.

ORDER

AND NOW, this 7th day of September, 1990, upon consideration of the defendants' Appeal from the Bankruptcy Court's Order entered September 7, 1989, directing the appellants to return to the trustee $23,483.75, plus interest at the prevailing legal rate,

IT IS HEREBY ORDERED that said Appeal is DENIED, and the Bankruptcy Court's Order dated September 7, 1989, is AFFIRMED.

/s/ Alan N. Bloch
United States District Judge

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Clerk, Bankruptcy Court
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U.S. Bankruptcy Judge Bernard Markovitz
16th Floor, Federal Building, Pittsburg, PA 15222

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
PENNSYLVANIA

In Re:

EMILY DAVIS,
a/k/a EMILY WINN,

Debtor

Civil Action No. 89-2156
Bankruptcy No. 84-2291
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ROBERT J. TAYLOR,
Trustee,

Plaintiff,

vs.

FREELAND & KRONZ, a partnership,
WENDELL G. FREELAND, RICHARD F.
KRONZ and EMILY DAVIS,

Defendants.

MEMORANDUM OPINION

BLOCH, District J.

In this bankruptcy action, defendants appeal the decision of the bankruptcy court allowing the trustee of the bankruptcy estate of Emily Davis (the debtor) tc recover certain post-petition transfers. For the reasons that follow, this Court affirms the award of the bankruptcy court.

I. Facts

The debtor filed a voluntary petition under Chapter 7 of the Bankruptcy Code (the Code) on October 24, 1984. At the time of the filing, the debtor was pursuing a legal action against her employer, Trans World Airlines (TWA). In a complaint filed with the Pittsburgh Human Relations Commission (Commission), the debtor alleged that TWA had discriminated against her in denying her promotions on the basis of her race and sex. The Commission found in the debtor's favor on December 16, 1980, but did not award damages at that time. When TWA appealed the Commission's decision to the Court of Common Pleas of Allegheny County, Pennsylvania, the debtor retained defendant Freeland & Kronz to represent her.

The Court of Common Pleas reversed the Commission's decision on September 23, 1981. The debtor appealed the decision to the Commonwealth Court of Pennsylvania, which reversed the decision of the Court of Common Pleas and reinstated the Commission's decision. TWA was then granted an allowance of appeal by the Pennsylvania Supreme Court. The Pennsylvania Supreme Court, however, had not rendered a decision at the time that the debtor filed her petition.[1]

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[1] The decision of the Commonwealth Court was affirmed on November 29, 1984. The Pennsylvania Supreme Court later granted TWA's petition for reargument. On October 1, 1986, the Court concluded that reargument had been improvidently granted and dismissed TWA's appeals.

In her schedule of assets and liabilities, the debtor listed the proceeds of the TWA lawsuit with an unknown value on Bankruptcy Schedule B-2. The debtor also claimed the proceeds of the cause of action as exempt on Schedule B-4 pursuant to 11 U.S.C. §§ 522(b) and (d), and listed its value as unknown. The debtor stated on Schedule A-2 that there were no creditors holding security. The debtor listed a total of $11,069.59 in liquidated and undisputed liabilities to unsecured creditors on Schedule A-3.

On January 4, 1985, the trustee presided over a § 341(a) meeting of creditors. The debtor and her counsel attended the meeting and indicated a possible recovery of $90,000 in the TWA lawsuit. Although the trustee advised the debtor on several occasions of his opinion that the cause of action from the TWA lawsuit was an asset of the estate, he failed to formally object to the exemption within the 30-day time period required by Bankruptcy Rule 4003(b).

On September 11, 1987, the debtor executed a settlement agreement with TWA which had a value approximating $110,000. The debtor granted TWA a release of all claims against it in consideration of $95,000 in cash, plus other valuable consideration (travel vouchers) worth approximately $15,000. The settlement agreement provided that the consideration was to be paid as follows:

> (1) $23,483.75, less applicable taxes, was to be paid to the debtor "as and for back pay and front pay";

(2) an additional $23,483.75 was to be paid to debtor " . . . as and for all alleged tort claims or any other claims not represented (sic) asserted wage losses"; and

(3) $63,032.50 was to be paid to debtor and Freeland & Kronz for attorney's fees and costs. Of this amount, $48,032.50 was to be paid in cash. The remaining $15,000 consisted of "miscellaneous charge orders" (i.e., travel vouchers) which could be used either by Freeland & Kronz or their designees for the purchase of air transportation from TWA.

When the trustee sent a letter to Freeland & Kronz requesting information on the status of the debtor's cause of action, Richard Kronz informed him of the settlement. On October 6, 1988, the trustee filed a complaint to avoid post-petition transfers and to recover property distributed or the value of such property. On September 7, 1989, the bankruptcy court ordered the defendants to return to the trustee $23,483.75, plus interest. That sum represented the proceeds allocated for the settlement of tort claims.

II. Discussion

The appellants first argue that the bankruptcy court erred as a matter of law when it allowed the trustee to recover proceeds of the debtor's TWA lawsuit which the debtor had claimed as exempt. The debtor's exemption claim was made pursuant to § 522(*l*) of the Bankruptcy Code, which provides:

The Debtor shall file a list of property that the Debtor claims as exempt under subsection (b) of

> this section . . . . Unless a party in interest objects, the property claimed as exempt on such list is exempt.

11 U.S.C4. § 522(*l*). The time limit for objecting to a claim of exemption is set forth in Bankruptcy Rule 4003(b):

> The Trustee or any creditor may file objections to the list of property claimed as exempt within 30 days after the conclusion of the meeting of creditors held pursuant to Rule 2003(a) or the filing of any amendment to the list unless, within such period, further time is granted by the court.

Because the trustee did not file objections to the debtor's claimed exemption within 30 days as required by Bankruptcy Rule 4003(b), the appellants argue that the proceeds of the debtor's lawsuit are exempt.

The bankruptcy court recognized that there is a difference of opinion among those courts which have considered the question whether a claimed exemption that is not objected to in a timely manner by a party in interest is thereby granted in every instance:

> Some courts have held that failure of any party in interest to timely object to a claimed exemption results in allowance of the objection *as declared*. *See In re Grossman*, 80 B.R. 311 (Bankr. E.D. Pa. 1987); *In re Hawn*, 69 B.R. 567 (Bankr. E.D. Tenn. 1987); *In re Hahn*, 60 B.R. 69 (Bankr. D. Minn. 1986); *In re Kretzer*, 48 B.R. 585 (Bankr. D. Nev. 1985); *Matter of Thomas*, 43 B.R. 201 (Bankr. M.D.

> Ga. 1984); *Matter of Wiesner*, 39 B.R. 963 (Bankr. W.D. Wis. 1984); *Matter of Gullickson*, 39 B.R. 922 (Bankr. W.D. Wis. 1984).
>
> Other courts have voiced concern that rigid enforcement of § 522(*l*), without further qualification, would permit what is tantamount to "exemption by declaration." They construe this subsection as implicitly containing the additional requirement that there be a statutory basis for the claimed exemption before the failure of any party in interest to timely object to it has any legal effect. *See Matter of Dembs*, 757 F.2d 777 (6th Cir. 1985); *In re Rollins*, 63 B.R. 780 (Bankr. E.D. Tenn. 1980); *In re Bennett*, 36 B.R. 893 (Bankr. W.D. Ky. 1984).

In Re Davis, 105 B.R. 288, 292 (W.D. Pa. 1989).

Several factors persuaded the bankruptcy court to conclude that the latter view, as articulated in *In Re Bennett*, was the better view. First, the bankruptcy court was persuaded by the explicit incorporation by reference in § 522(*l*) of § 522(b), which limits exemptions to "any property that is exempt under federal law . . . or state law or local law that is applicable on the date of the filing of the petition." 11 U.S.C. § 522(b). The bankruptcy court concluded that no purpose would be served by § 522(b) if a debtor could select in any manner her exemptions. *In Re Davis*, 105 B.R. at 293. Second, the bankruptcy court's decision was based upon policy considerations. The bankruptcy court concluded that the view articulated in *In Re Grossman* would encourage debtors to claim all of their property as exempt, thereby hindering the orderly administration of the debtor's estates. *Id.*

This Court is similarly persuaded that § 522(*l*) contains the additional requirement that there be a statutory basis for a claimed exemption before the failure of any person in interest to timely object to it has any legal effect. In the present case, there was no statutory basis for claiming as exempt that part of the lawsuit's proceeds which represented recovery for tort claims. Allowing the debtor to recover proceeds for which there was no statutory basis would render § 522(b) negutory. Furthermore, the orderly administration of the debtor's estate would not be advanced by allowing her to claim as exempt any value which she had simply designated "unknown." If she were allowed to do so, the burden would shift to the trustee to insure that there was a statutory basis for each claimed exemption. If, as in the instant case, the trustee failed to dispute a claimed exemption,[2] the debtor's action essentially would amount to an exemption by declaration.

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[2] Of the cases cited by the bankruptcy court for the proposition that failure to timely object to a claimed exemption results in allowance of the exemption as declared, only *In Re Grossman*, 80 B.R. 311 (Bankr. E.D. Pa. 1987), provides a rationale which incorporates more than a restatement of the express terms of § 522(*l*). In *Grossman*, the Court stated that "in most instances outlandish exemptions will be discovered" because the "trustee is permitted to object to objection claims, presides over the meeting of the creditors . . . where exemption claims should be reviewed, and has a fiduciary obligation to protect the interests of creditors." 80 B.R. at 313. In the present case, this safeguard did not exist. Although the trustee advised the debtor before the deadline for making an objection that the cause of action was an asset of the estate, he failed to timely object to the debtor's claimed exemption.

The appellants next argue that the bankruptcy court erred as a matter of law when it included in its valuation of the debtor's cause of action attorney's fees which were incurred post-petition. The appellants argue that because they had a lien against certain of the proceeds, the estate could not recover those proceeds. In addition, the appellants contend that the bankruptcy court was clearly erroneous when it included in its valuation of the debtor's cause of action attorney's fees which were a separate element of a settlement made almost two years after the discharge, partially incurred post-petition and never claimed by the trustee. This Court, however, need not determine whether appellants had a valid lien against certain proceeds. By avoiding only $23,483.75 of the $71,516.25 transferred, the bankruptcy court allowed for the full amount of the attorney's lien. Therefore, the bankruptcy court did not commit reversible error in valuing the lawsuit at $110,000 without specific reference to an attorney's lien.

The appellants' final argument is that the bankruptcy court erred as a matter of law in holding that the doctrine of judicial estoppel prevented the appellants from asserting in the bankruptcy proceeding that a portion of the settlement, which had been allocated for tort claims in the TWA lawsuit, represented pension benefits. During the bankruptcy proceeding, "[d]efendant testified that this portion of the settlement in reality was for lost wages, but was described as being for tort claims in order to avoid payment of applicable taxes." *Davis*, 105 B.R. at 293-94. However, appellants now apparently seek to characterize the portion of the settlement differently because recovery for tort claims is not exemptable.

The general principle of judicial estoppel is that "'[a] party to litigation will not be permitted to assume inconsistent or mutually contradictory positions with respect to the same matter in the same . . . suit[s].'" *Scarano v. Central R. Co. of New Jersey*, 203 F.2d 510, 513 (3d Cir. 1959). Appellants have assumed inconsistent positions with respect to the proceeds from the TWA lawsuit. Appellants now maintain that the reason for the mischaracterization of the proceeds was to avoid income tax liability. Appellants cite *City of Kingsport v. Steel & Roof Structure, Inc.*, 500 F.2d 617, 620 (6th Cir. 1974), for the proposition that the doctrine of judicial estoppel does not apply to settlement agreements. In *City of Kingsport*, the Court held that because of the settlement of the plaintiff's case, the defense of the bar of statute of limitations was never decided and, therefore, no estoppel could exist. However, in the present case, the appellants assumed a position with regard to the proceeds of the TWA lawsuit during the first suit, and the proceeds were ultimately allocated pursuant to that characterization. Appellants may not now assume a contradictory position with regard to the proceeds allocated for tort claims.[3]

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[3] Appellants seek to recharacterize the proceeds as being for pension benefits. Appellants argue that a "major component of the debtor's claim against TWA was for pension benefits." Having reviewed the record on appeal, this Court finds that the settlement did not, in fact, represent pension loss.

For the foregoing reasons, this Court affirms the order of the bankruptcy court directing the appellants to return to the trustee $23,483.75, plus interest at the prevailing legal rate.

An appropriate Order will be issued.

Date: 9/7/90 /s/ Alan N. Bloch
United States District Judge

cc: Counsel of record.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF
PENNSYLVANIA

In Re: Bankruptcy No. 84-2291

EMILY DAVIS, a/k/a
EMILY WINN,

Debtor

Adversary No. 88-0446

ROBERT J. TAYLOR,
Trustee,

Plaintiff

v.

FREELAND & KRONZ, a
partnership; WENDELL G.
FREELAND,
RICHARD F. KRONZ; and
EMILY DAVIS,

Defendants.

ORDER OF COURT

AND NOW at Pittsburgh in said District this 7th day of September, 1989, in accordance with the foregoing Memorandum Opinion of this same date, it is hereby ORDERED, ADJUDGED and DECREED that Defendants Emily Davis and Freeland & Kronz, return to

Plaintiff Robert J. Taylor, Trustee, the amount of $23,483.75, plus interest at the prevailing legal rate.

/s/ Bernard Markovitz
BERNARD MARKOVITZ
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF
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EMILY DAVIS, a/k/a
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Debtor

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ROBERT J. TAYLOR,
Trustee,

Plaintiff

vs.

FREELAND & KRONZ, a
partnership; WENDELL G.
FREELAND,
RICHARD F. KRONZ; and
EMILY DAVIS,

Defendants

MEMORANDUM OPINION

Before the Court is the Trustee's *Complaint To Avoid Post-Petition Transfers, And To Recover The Property Transferred Or The Value of Such Property*. Specifically, Robert J. Taylor, Trustee ("Trustee") seeks to avoid and recover certain postpetition transfers of the proceeds of

the settlement of a legal action brought by Emily Davis ("Debtor") against Trans World Airlines ("TWA").

The Trustee contends that the payment of that portion of the settlement which was allocated to lost wages suffered by Debtor prior to the bankruptcy filing is "property of the estate" and consequently, any transfer thereof is avoidable pursuant to 11 U.S.C. § 549(a). The Trustee further claims that, pursuant to 11 U.S.C. § 550(a), he is entitled to recover $67,349.00, plus interest, which sum is the alleged value of the estate's interest in the cause of action at the time the bankruptcy petition was filed.

Defendants argue that the proceeds of the settlement are not "property of the estate". In the alternative, Defendants aver that if they were estate assets, said assets were exempted by Debtor. Defendants opine that as no party in interest, including the Trustee, has objected to the exemption of the cause of action, said exemption, whether having a statutory basis or not, should be permitted.

The Court has heard the testimony of the parties, reviewed all of the exhibits, and researched the law, and now finds that the Trustee may avoid and recover $23,483.75, plus interest. Said sum will be sufficient to pay all creditors one hundred percent (100%) of their claims plus interest, if interest is appropriate. In addition, excess funds will be available for payment of appropriate administrative fees and costs. Any sum not utilized will be returned to Defendants.

FACTS

Debtor filed a voluntary petition under Chapter 7 of the Bankruptcy Code on October 24, 1984. At the time of the filing, Debtor was pursuing a legal action against TWA alleging employment discrimination. Debtor had filed a complaint in April of 1978 with the Pittsburgh Human Relations Commission ("Commission") in which she alleged that TWA had discriminated against her in denying promotions on account of her race and sex.

The Commission found in favor of Debtor on December 16, 1980. It did not, however, award damages at that time; rather, it directed TWA to submit further information in order that the amount of damages might be determined.

TWA appealed the Commission's decision to the Court of Common Pleas of Allegheny County, Pennsylvania. At that point, prior counsel's representation was terminated and the law firm of Freeland & Kronz was retained to represent the Debtor. The Commission's decision was reversed by the Court of Common Pleas on September 23, 1981.

Debtor appealed this decision to the Commonwealth Court of Pennsylvania, which reversed the decision of the Court of Common Pleas, and reinstated the decision of the Commission on June 27, 1983.

TWA then petitioned the Pennsylvania Supreme Court for an Allowance of Appeal, which was granted in November of 1983. The decision of the Commonwealth Court was affirmed on November 29, 1984 by an equally divided vote of the Supreme Court. Mr. Justice

Papadakos, who as a Common Pleas Judge had previously reversed the decision of the Commission, did not participate in the decision.

TWA thereafter petitioned the Pennsylvania Supreme Court to permit it to file an Application For Reargument Out of Time. The Application was allowed and the matter was reargued on September 16, 1986. On October 1, 1986, the Supreme Court concluded that reargument had been improvidently granted and dismissed the appeal of TWA.

Debtor's cause of action against TWA was before the Pennsylvania Supreme Court for the first time when she filed her Chapter 7 voluntary petition on October 24, 1984. The appeal by TWA had been briefed and argued, but was not decided until approximately five (5) weeks later.

Debtor listed the proceeds of the legal action against TWA with an unknown value on Bankruptcy Schedule B-2. She also claimed the proceeds of the cause of action as exempt on Schedule B-4 pursuant to 11 U.S.C. §§ 522(b) and (d) and listed its value as "unknown". In addition, Debtor stated on Schedule A-2 that there were no creditors holding security and on Schedule A-3 listed a total of $11,069.59 in liquidated and undisputed liabilities to unsecured creditors.

Robert F. Taylor, Esq., was appointed Interim Trustee on November 26, 1984, and he presided over a Section 341(a) Meeting of Creditors on January 4, 1985. Debtor and her bankruptcy counsel attended the meeting and they indicated a possible recovery in the cause of action against TWA of $90,000.00. The Proceeding

Memo prepared by the Trustee evidenced Debtor and/or Debtor's counsel's acknowledgment of the litigation and its potential value, and noted that the matter was on appeal at that time.

The Trustee, on various occasions prior to and subsequent to the time frame for objecting to exemptions, advised Debtor of his legal position that the cause of action was an asset of the estate; however, on no occasion did he perform the obvious, namely, formally object to the exemption of this estate asset.

Debtor received a discharge from bankruptcy on October 16, 1985; however, the case has never been closed.

On September 11, 1987, Debtor executed a settlement agreement with TWA which had a value approximating $110,000.00. Debtor granted TWA a release of all claims against it in consideration of $95,000.00 in cash, plus other valuable consideration (travel vouchers) worth approximately $15,000.00

According to the precise and agreed upon terms of the settlement contract negotiated by the parties, the consideration to Debtor was to be ". . . paid, allocated, and apportioned . . ." as follows:

(1) $23,483.75, less applicable taxes, was to be paid to Debtor "as and for back pay or front pay";

(2) An additional $23,483.75 was to be paid to Debtor ". . . as and for all alleged tort claims

or any other claims not represented (sic) asserted wage losses"; and

(3) $63,032.50 was to be paid to Debtor and Freeland & Kronz for attorney's fees and costs. Of this amount, $48,032.50 was to be paid in cash. The remaining $15,000.00 consisted of "miscellaneous charge orders" (i.e., travel vouchers) which could be used either by Freeland & Kronz or their designees for the purchase of air transportation from TWA.

On September 17, 1987, TWA issued a check payable to Debtor and Freeland & Kronz in the amount of $71,516.25, in satisfaction of those portions of the settlement allocated to tort claims ($23,483.75) and to attorney's fees and costs ($48,032.50).

On September 21, 1987 TWA issued another check, payable to Debtor, in satisfaction of that portion of the settlement allocated to back pay or front pay. The check was in the amount of $16,614.75, with the remaining $6,689.00 deducted for taxes.

On October 21, 1987 Freeland & Kronz disbursed the check for $71,516.25 as follows: $32,159.50 was distributed to Debtor; the remaining $39,356.75 was distributed to Freeland & Kronz.

Freeland & Kronz also received, pursuant to the settlement, $15,000.00 worth of travel vouchers. It retained $7,500.00 worth of them and assigned the remaining $7,500.00 worth to Debtor for her own use.

The Trustee sent a letter to Freeland & Kronz on May 2, 1988, requesting information on the status of Debtor's cause of action. Richard Kronz informed the Trustee of the settlement on May 6, 1988.

On October 8, 1988, the Trustee commenced the present adversary proceeding by filing a Complaint To Avoid Post-Petition Transfers, And To Recover The Property Distributed Or The Value of Such Property.

ANALYSIS

With certain exceptions not relevant here, the trustee may avoid any postpetition transfer of "property of the estate" of a debtor that is not authorized under the Code or by the Court. 11 U.S.C. § 549(a). In addition, the trustee may recover, for the benefit of the estate, either the property transferred or the value of such property from the initial transferee or any immediate transferee of such initial transferee. 11 U.S.C. § 550(a).

11 U.S.C. § 541 defines, with substantial specificity, what kinds of property are "property of the estate". Congress intended a broad range of property to be brought into the estate. *U.S. v. Whiting Pools*, 462 U.S. 198, 204 (1983). Section 541 includes all kinds of property, both tangible and intangible, cause of action, and all other forms of property formerly specified in Section 70(a) of the old Bankruptcy Act. 4 Collier on Bankruptcy ¶ 541.01 at 541-5 (15th ed. 1989), *citing to* H.R. Rep. No. 595, 95th Cong., 1st Sess. 367-68 (1977); S. Rep. No. 989, 95th Cong., 2d Sess. 82-3 (1973). It even includes property needed for a debtor's fresh start. *Warren v. G.M. Scott & Sons*, 34 B.R. 543, 544 (Bankr. S.D. Ohio 1983).

Once property is included in the bankruptcy estate, the debtor may exempt it pursuant to 11 U.S.C. § 522. The Bankruptcy Court must then determine what property may be exempted and what remains property of the estate. *See* 4 Collier on Bankruptcy ¶ 541.01 at 541-6 (15th ed. 1989). When a claimed exemption is upheld by the court, the property so exempted no longer is considered property of the estate. *See In re Gagnard*, 17 B.R. 811, 813 (Bankr. D. La. 1982).

Defendants contend that the proceeds of the settlement were exempted from Debtor's estate, and hence are not subject to 11 U.S.C. §§ 549(a) and 550(a), as neither the Trustee, nor any other party in interest, ever objected to Debtor's claimed exemption in the proceeds of the cause of action.

11 U.S.C. § 552(*l*) provides in relevant part that:

> The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. . . . Unless a party in interest objects, the property claimed as exempt is exempt.

There is a significant difference of opinion among those courts which have considered the matter as to whether a claimed exemption that is not objected to in a timely manner by a party in interest is thereby granted in every instance.

Some courts have held that failure of any party in interest to timely object to a claimed exemption results in allowance of the exemption *as declared*. *See In re Grossman*, 80 B.R. 311 (Bankr. E.D. Pa. 1987); *In re Hawn*, 69 B.R. 567 (Bankr. E.D. Tenn. 1987); *In re Hahn*,

60 B.R. (Bank. D. Minn. 1986); *In re Kretzer*, 48 B.R. 585 (Bankr. D. Nev. 1985); *Matter of Thomas*, 43 B.R. 201 (Bankr. M.D. Ga. 1984); *Matter of Wiesner*, 39 B.R. 963 (Bankr. W.D. Wis. 1984); *Matter of Gullickson*, 39 B.R. 922 (Bankr. W.D. Wis. 1984).

Other courts have voiced concern that rigid enforcement of § 552(*l*), without further qualification, would permit what is tantamount to "exemption by declaration". They construe this subsection as implicitly containing the additional requirement that there be a statutory basis for the claimed exemption before the failure of any party in interest to timely object to it has any legal effect. *See Matter of Dembs*, 757 F.2d 777 (6th Cir. 1985); *In re Rollins*, 63 B.R. 780 (Bankr. E.D. Tenn. 1986); *In re Bennett*, 36 B.R. 893 (Bankr. W.D. Ky. 1984).

Although plausible arguments can be made in support of either of these positions, this Court is convinced that the view articulated in *In re Bennett, supra* at 894-95, is the superior view. The Court is persuaded by the explicit incorporation by reference in subsection (*l*) of the provisions of subsection (b), which limits exemptions to:

> ". . . any property that is exempt *under federal law*. . . or *state law* or *local law* that is applicable on the date of the filing of the petition."

11 U.S.C. § 522(b) (Emphasis added.)

If Debtor may select in any manner her exemptions, then no purpose is served by the inclusion of the emphasized terms. We decline to determine that

Congress inserted the terms but refused to grant them meaning.

There are also policy considerations which make the latter view the better one. The former view would encourage certain debtors of questionable integrity to claim *all* of their property as exempt, thereby leaving it to the trustee and creditors to challenge such claims. Orderly administration of such debtor's estates would be difficult, if not impossible, and uncertainty and constant litigation, if not outright chaos, would result. *See In re Bennett, supra.* The debtor could gamble that the trustee would be inept and/or negligent in fulfilling his mandated duties. If correct, the debtor would collect ill-gotten gain while his creditors suffered the loss. Again, this surely would not be the congressional intent.

Both sides have urged this Court to disregard the language of the settlement agreement in determining the precise nature of the settlement. They instead urge this Court to characterize the settlement in ways which are fanciful at best, and require leaps of imagination which the Court is unwilling to make. The only acceptable basis for determining the meaning of the settlement is found in the language used therein.

Defendants correctly point out that the value of any interest in property which a debtor wishes to exempt must be ascertained as of the date the bankruptcy petition was filed. See 11 U.S.C. § 522(a)(2). They strenuously argue that the value of the cause of action against TWA, as of October 24, 1984, was approximately $10,000.00.

Before Debtor filed her voluntary petition, the Commonwealth Court of Pennsylvania had reversed the

unfavorable decision of the Court of Common Pleas and had reinstated the favorable decision of the Commission. The Commonwealth Court of Pennsylvania determined that TWA owed the Debtor a sum of money.

In addition, although damages had not yet been determined, Debtor and her bankruptcy counsel stated on January 4, 1985, at the first meeting of creditors, that she anticipated a recovery of $90,000.00. This belies the contention made at trial that the cause of action had a value of merely $10,000.00 as of October 4, 1984.

The Court finds that the value of the cause of action on October 24, 1984 was $110,000.00. John Meyer, Esq., at the time an associate of Freeland & Kronz, testified that the attitude of his employer at that time was that their client's cause of action had great value. Over 500 hours were ultimately expended on the case. Moreover, Freeland & Kronz at no time ever suggested to their client that she settle the action for such a nominal amount of $10,000.00. That Debtor was able to realize the full value of her cause of action is further evidence of its value.

Debtor, in her Schedule B-4, refers to § 522(d) in support of the claimed exemption. In particular, she appears to rely upon U.S.C. § 522(d)(11), which exempts:

> (a) payment in compensation of loss of future earnings of the debtor . . . to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

There is no statutory basis for that portion of the $71,516.25 postpetition cash payment by TWA to

Freeland & Kronz and Debtor for ". . . tort claims or any other claims not represented (sic) wage losses". The Trustee may avoid and recover from Freeland & Kronz (as initial transferee) and Debtor (as the immediate transferee of Freeland & Kronz) $23,483.75, that portion of the settlement allocated for so-called "tort claims", plus interest at the prevailing legal rate, from the date of the initial transfer on September 17, 1987.

Defendant testified that this portion of the settlement in reality was for lost wages, but was described as being for tort claims in order to avoid payment of applicable taxes. As far as can be determined, no taxes were ever withheld or ultimately paid for this portion of the settlement. Neither Defendant can now argue that it really was for lost wages and therefore may be exempted pursuant to 11 U.S.C. § 522(d)(II). In effect, they are utilizing a knife and averring that it only cuts one way. As Defendants treated this payment as a tort recovery and failed and/or refused to pay taxes on it, this Court feels constrained to and must order that it be returned to the Trustee. There is no statutory basis permitting an exemption of this "tort recovery".

Also, Defendants are prevented by the doctrine of judicial estoppel from asserting in the present proceeding that this portion of the settlement was actually for lost wages. The doctrine of judicial estoppel is applicable at any time that a litigation plays ". . . fast and loose with the courts. . .". *Scarano v. Central R. Co. of New Jersey*, 203 F.2d 510, 513 (3rd Cir. 1958). According to the doctrine, "a party may be precluded by a prior position taken in litigation from later adopting an inconsistent position in the course of a judicial proceeding". *Id.* Defendants unquestionably took the position in the

previous legal action that that portion of the settlement now under discussion was for tort losses. It was to their benefit and in their interest to do so. Consequently, they cannot now be heard to maintain that it is really for lost wages. They made their choice and are bound thereto.

As has been indicated, when Debtor filed her voluntary Chapter 7 petition on October 24, 1984, she listed a total of $11,069.59 in liquidated and undisputed liabilities on Schedule A-3. Requiring Defendants to return the $23,483.75 portion of the settlement for averred tort losses will produce a *res* sufficient to pay all of Debtor's creditors, with interest, as well as the legal fees and costs incurred by counsel to the Trustee for prosecuting the present action.

Consequently, it is not necessary for this Court to also determine whether any of the remaining portions of the settlement should be returned to the Trustee. Even supposing for the moment that some or all of the remainder also should be returned, this Court declines to do so. As all of Debtor's creditors will be paid in full, the remainder ultimately would be returned to Defendants by the Trustee, after said Trustee deducted additional fees for administering the additional assets. This Court, however, is unwilling to allow the Trustee to so benefit from his own dereliction of duty and/or ignorance of bankruptcy law in failing to object in a timely fashion to Debtor's claimed exemption for the proceeds of her lawsuit against TWA. Had the Trustee

acted with knowledge and/or diligence, the present action, in all likelihood, never would have arisen.

An appropriate order will issued.

/s/ Bernard Markovitz
BERNARD MARKOVITZ
U.S. Bankruptcy Judge